No. 83-496

In the Supreme Court of the United States

OCTOBER TERM, 1983

HARRY J. WILFORD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

ROBERT J. ERICKSON
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the Hobbs Act, 18 U.S.C. 1951, reaches the conduct of union officials who, employing threats of economic harm, exact monetary payments from non-union truck drivers under the guise of collecting "dues and initiation fees" to which the union has no lawful claim.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—Continued:

Statutes:

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-496

HARRY J. WILFORD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A26) is reported at 710 F.2d 439.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 1983. A petition for rehearing was denied on August 1, 1983 (Pet. App. A35). The petition for a writ of certiorari was filed on September 22, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Iowa, petitioners, all officers or members of Teamsters Local 238 in Cedar Rapids, Iowa, were convicted of conspiracy to obstruct commerce by extorting money under threats of economic harm, in violation of the Hobbs Act, 18 U.S.C. 1951. In addition, petitioner Wilford was convicted on three counts of unlawfully

receiving funds on behalf of the union, in violation of 29 U.S.C. 186(b)(1), and five counts of unlawfully demanding an unloading fee, in violation of 29 U.S.C. 186(b)(2); petitioner Dague was convicted on four substantive counts of extortion, one count of unlawfully receiving funds on behalf of the union, and three counts of unlawfully demanding an unloading fee; petitioner Casten was convicted on one substantive count of extortion, one count of unlawfully receiving funds on behalf of the union, and two counts of unlawfully demanding an unloading fee; and petitioner Boeding was convicted on five substantive counts of extortion, three counts of unlawfully receiving funds on behalf of the union, and five counts of unlawfully demanding an unloading fee. Petitioners were each sentenced to three years' probation and fined as follows: Wilford, $34,000; Dague, $18,000; Casten, $7,000; and Boeding, $10,000.

The facts are not in dispute. In 1976, the construction firm of Darin and Armstrong, Inc. (D & A) began work as general contractor on a waste treatment plant in Cedar Rapids, Iowa. Building materials were routinely delivered to the construction site by self-employed truck drivers or by non-union drivers affiliated with trucking companies that were neither parties to nor subject to the collective bargaining contract in force between D & A and Local 238. Tr. 419-420, 671-672, 827-828, 844-845, 861, 869-871.[1] Nevertheless, petitioners exacted $49 in union "initiation fees and

---

[1]The pertinent contract provisions are set out at Pet App. A4 n.2. Under those terms, D & A agreed to employ union members "on work coming within the scope of structural building work or operations" (*ibid.*). However, neither this provision nor the provision awarding the Teamsters jurisdiction to operate trucks on the job site (*ibid.*) applied to over-the-road drivers who performed "delivery work" rather than actual "construction work" on the site (Tr. 419-420, 856-861, 868-870, 885, 1451). For purposes of the contract, building materials were not considered to be "on site" — and hence within the jurisdiction of Local 238 under the contract — until the materials were actually unloaded from the delivery vehicles (Tr. 827, 861, 869).

membership dues" from each non-union driver as a prerequisite to completing delivery and having his truck unloaded at the construction site. The payments were exacted by actual and threatened refusals to allow non-union truckers to make deliveries if they declined to pay the $49 fee. Pet. App. A3-A4.

Acting as the Teamster steward at the construction site (Tr. 470-471, 657-679), petitioner Boeding stopped all incoming trucks, "carded" the drivers for their union affiliations, and informed non-union drivers that they could not unload their trucks unless they first "joined" Local 238 by paying the $49 fee (Pet. App. A3-A4). Petitioners Dague and Casten, both business agents of Local 238, prepared the necessary papers and collected the payments from the non-union drivers (*id.* at A4). For his part, as secretary-treasurer and chief executive officer of Local 238, petitioner Wilford oversaw the union's activities, deposited the funds collected from the non-union drivers, and signed the membership cards issued to them (*ibid.*).

Despite repeated protests from individual drivers and D & A officials, petitioners' practice continued unabated throughout 1977 and into the spring of 1978. Although not interested in joining Local 238, most non-union drivers eventually paid the $49 fee demanded of them (Pet. App. A4).[2] However, those who paid the fee did so only to ensure that their trucks would be unloaded (*ibid.*) and to minimize

---

[2]On occasion, when drivers were unwilling or unable to pay the demanded membership fee, D & A would provide the payment money for them in order to avoid project delays (Pet. App. A5). In addition, as the court below noted (*ibid.*), "[a]t least one driver refused to pay the fee, and left the site without having been unloaded."

their financial losses (see, *e.g.*, Tr. 117, 224, 268-270, 274, 288, 316, 481, 498, 501, 505, 528-532, 537, 550, 598, 695).[3]

The over-the-road drivers, most of whom had considerable experience, had never encountered a similar demand in their deliveries to other construction sites (see, *e.g.*, Tr. 229, 316, 363-364, 407, 484, 535, 559-560, 579, 601, 617, 714-715, 753; cf. Tr. 871-872). Accordingly, various drivers characterized the payments as unloading fees rather than bona fide union dues. Driver J.W. Coon, for example, labelled the practice banditry (Tr. 317); driver Donald Zieber called it a "shaky * * * * * way to get in [his] pocket" (Tr. 363, 378); driver Charles Boyd stated that "it was just taking another truck driver * * * [i]t was just $49 to pay to get unloaded" (Tr. 498); driver Charles Unsel considered it "[a] rip off * * * just to get my load unloaded" (Tr. 557); and driver John Kimbel testified that "it was just to get unloaded. Like a bribe" (Tr. 576). Indeed, consistent with petitioner Boeding's statements to driver Gary Pierce that his membership benefits from Local 238 were limited solely to the right to unload at the site for as long as he paid his dues (Tr. 92, 101, 106-107), none of the over-the-road drivers who joined Local 238 ever received collective bargaining representation

---

[3]The drivers testified that they would suffer financial losses if their trucks were not unloaded (Tr. 105, 126-127, 146-147, 241-242, 260, 277-278, 371, 406, 639, 697, 713, 749-750, 753), and that they did not believe that their trucks would be unloaded if they refused petitioners' demands (Tr. 224, 533, 552, 638-689). Petitioner Boeding admitted at trial that self-employed truck drivers would suffer losses if their vehicles were not unloaded (Tr. 1094). Furthermore, the drivers, who encountered delays at the site ranging from several hours to several days as a result of petitioners' demands (see, *e.g.*, Tr. 112, 262-263, 404, 407, 428-429, 493-494, 500, 523, 641-642, 666, 750), suffered actual financial harm since they were prevented from picking up other loads (Tr. 146-147, 407, 483, 713).

or any other benefits from Local 238 (see, *e.g.*, Tr. 226-227, 238, 372-373, 483-484, 501-502, 534, 557-558, 580, 697-698).[4]

In pressing their demands, petitioners were insistent that all non-union drivers arriving at the site join not just any Teamsters local but Local 238 in particular. Thus, when a driver arrived at the site who owed dues to another Teamsters local (Tr. 216-221, 225-226) or who was on withdrawal status from another local (Tr. 284, 286-287, 289, 291), the driver was compelled to join Local 238 rather than merely updating his membership in the Teamsters local where he was employed. Petitioners also rejected the suggestion that members of Local 238 drive the over-the-road vehicles onto the construction site rather than requiring the non-union drivers to join Local 238 (Tr. 362-363, 382, 785, 787).[5] Finally, petitioners would not permit over-the-road drivers who were union members to switch trucks with their non-union colleagues for purposes of unloading. For example, when driver Calvin Swanson prevailed upon a fellow employee who belonged to Local 238 to drive his truck onto the site, petitioner Boeding told them that "in order to unload * * *, the load should have originated with a union man and so therefore, they wouldn't honor it even though it [the substitute driver] was a union man in Cedar Rapids" (Tr. 135-136). Similarly, after driver Orville Taylor's fee was paid on March 14, 1978, Taylor saw several trucks lined up

---

[4]Petitioner Wilford admitted at trial that he never undertook to negotiate or make bargaining demands on behalf of the over-the-road drivers who paid membership fees at the D & A site (Tr. 1378-1379). Moreover, the over-the-road drivers resided and worked beyond Local 238's geographic jurisdiction (Tr. 1367).

[5]At trial, petitioner Boeding admitted that he refused to allow substitute drivers to take trucks onto the site for unloading (Tr. 1092-1093). However, Local 238's attorney testified that petitioners never informed him of this action and stated that it was contrary to the union's goal "to get our people to drive every truck we can get on" (Tr. 1183).

at the gate, unable to unload unless the drivers joined the union (Tr. 640-641). Taylor told petitioner Boeding, "I am a Teamster now. I can drive the trucks in for them" (Tr. 641). Boeding replied, "No, you can't drive them in. That [the $49 payment] was for your truck" (*ibid.*). In the same vein, on April 10, 1978, driver Douglas Watson inquired whether a co-worker who had already paid his fee to Local 238 could take several waiting trucks onto the site (Tr. 747-748, 767). Petitioner Boeding replied, "[N]o way in hell," and said that a $49 fee was required to unload each truck no matter who drove the truck onto the site (*ibid.*).

Petitioners' practice of stopping non-union drivers continued until mid-April 1978, when an NLRB investigator arrived at the construction site in response to a complaint filed by a driver (Pet. App. A5). During the investigation, the NLRB investigator interviewed petitioners Boeding (Tr. 908-912), Casten (Tr. 912-914), and Dague (Tr. 915-917), each of whom denied that there was any requirement that over-the-road drivers join Local 238 in order to have their trucks unloaded (Tr. 909, 914, 917). In addition, all three men denied telling D & A officials or individual drivers that the drivers had to join Local 238 before being unloaded (Tr. 909, 914, 916, 917). Despite these denials, the NLRB commenced an injunctive action as a result of its investigation (Pet. App. A5). Local 238 thereafter entered into a settlement stipulation under which it agreed to terminate the challenged practice and to refund membership fees to several over-the-road drivers (*ibid.*).

ARGUMENT

Petitioners do not dispute that they induced over-the-road drivers to part with money or that their activities affected interstate commerce. Rather, relying on *United States* v. *Enmons*, 410 U.S. 396 (1973), petitioners contend (Pet. 6-13) that their conduct did not constitute "extortion"

within the meaning of the Hobbs Act, 18 U.S.C. 1951, because its purpose was not "wrongful." As the court of appeals correctly observed (Pet. App. A9), however, there was sufficient evidence to show that petitioners "had no lawful claim to the money they received from the non-union drivers" and that they were not pursuing "legitimate labor objectives." Accordingly, petitioners' extortion convictions do not conflict with this Court's holding in *Enmons*.

1. As the Court noted in *Enmons*, Congress enacted the Hobbs Act " 'to prevent both union members and non-union people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce.' " 410 U.S. at 403, quoting 91 Cong. Rec. 11900 (1945) (remarks of Rep. Hancock). In particular, the Hobbs Act was intended to overrule this Court's construction of its predecessor statute, the Anti-Racketeering Act of 1934, ch. 569, 48 Stat. 979. In *United States* v. *Local 807*, 315 U.S. 521 (1942), union members stopped all out-of-town truckers entering New York City and exacted a fee (based on the union wage scale) from each trucker before the drivers were allowed to deliver their cargoes (*id.* at 526, 539). Relying upon a wage exemption contained in the Anti-Racketeering Act, the Court held that the union members could not be prosecuted for extortion. Against this background, Congress passed the Hobbs Act, which broadly proscribes "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)). See generally *Enmons*, 410 U.S. at 401-404.

In interpreting the Hobbs Act, this Court has upheld its application to union officials who compelled an employer to pay "wages" to union members for "imposed, unwanted, superfluous and fictitious services * * *." *United States* v. *Green*, 350 U.S. 415, 417 (1956). Rejecting the claim that the

indictment in *Green* merely described traditional union efforts to secure "made work" for its members (*id.* at 418), the Court concluded that the Hobbs Act "was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship" (*id.* at 419) (footnote omitted). The Court also rejected petitioners' present argument (Pet. 7-8) that the Hobbs Act was intended to cover only conduct that resulted in personal gain for the extortionist; the Court stated unequivocally that "extortion as defined in the statute in no way depends upon having a direct benefit conferred on the person who obtains the property" (*id.* at 420).[6]

Similarly, in *Enmons*, 410 U.S. at 401-404, 408, the Court reiterated that the Hobbs Act reaches the type of union activities involved in *Local 807* and *Green*; however, it refused to extend the statute to the activities of union members charged with acts of violence during a strike. The Court concluded that the term "wrongful" in the Hobbs Act's definition of extortion "limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to the property" (410 U.S. at 400). Relying heavily on the Act's legislative history, the Court concluded that the statute "does not apply to the use of force to achieve legitimate labor ends" (*id.* at 401), such as higher wages or employment benefits. In so holding, however, the Court made clear that its decision did not preclude extortion prosecutions in situations involving unlawful labor objectives, including those situations in which the accused has no lawful claim to the payment (*id.* at 400).

---

[6]In their brief as amicus curiae (at 5), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America advance the same erroneous argument. Like petitioners, the Teamsters fail to acknowledge that their contention was rejected in *Green*.

In keeping with the decisions of this Court, the courts of appeals have consistently held that the *Enmons* exception applies only to that class of cases in which threats or force have been utilized by unions in the bona fide pursuit of legitimate objectives, such as higher wages sought through collective bargaining with an employer. For example, in *United States* v. *Quinn*, 514 F.2d 1250 (5th Cir. 1975), cert. denied, 424 U.S. 955 (1976), the court held that where a union representative demanded and received payments from an employer in violation of the Taft-Hartley Act, 29 U.S.C. 186(b)(1), the demand could not be regarded as having been made in pursuit of a legitimate labor goal. Thus, even though there was a bona fide labor dispute and Quinn was representing employees in their quest for higher pay, the court stated (514 F.2d at 1259):

> The decisive point is that federal labor law * * * specifically declared that Quinn, in the exercise of duress, had no lawful claim to the payment; its receipt was statutorily declared not to be a legitimate labor objective. Thus, it was wrongful and the Enmons rationale provides no defense.

Similarly, in *United States* v. *Clemente*, 640 F.2d 1069 (2d Cir.), cert. denied, 454 U.S. 820 (1981), the court concluded that inducing or exploiting fear of economic loss, the extortionate means charged, was not an inherently wrongful labor tactic, but that "when employed to achieve a wrongful purpose, its 'use' is wrongful" (*id.* at 1077). The defendants in *Clemente*, who used their power to call waterfront work stoppages to coerce the payment of money by businesses, were found to have used wrongful means in violation of the Hobbs Act because their objective — to obtain money to which they were not lawfully entitled — was wrongful, and therefore unlike the "legitimate" wage demands in *Enmons*. See also *United States* v. *Russo*, 708 F.2d 209, 215 (6th Cir.

1983), cert. denied, No. 83-368 (Nov. 28, 1983); *id.* at 216 (Martin, J., concurring); *United States* v. *Porcaro*, 648 F.2d 753, 760 (1st Cir. 1981); *United States* v. *Thordarson*, 646 F.2d 1323, 1327-1329 (9th Cir.), cert. denied, 454 U.S. 1055 (1981); *United States* v. *French*, 628 F.2d 1069, 1075 (8th Cir.), cert. denied, 449 U.S. 956 (1980); *United States* v. *Cerilli*, 603 F.2d 415, 419-420 (3d Cir. 1979), cert. denied, 444 U.S. 1043 (1980); *United States* v. *Warledo*, 557 F.2d 721 (10th Cir. 1977).

2. Applying this consistent body of case law, it is evident that the court below correctly concluded that petitioners' demands were unlawful because they were not made in the pursuit of a legitimate labor objective, as defined in *Enmons*. Petitioners' suggestion (Pet. 6) that they were merely engaged in legitimate organizational efforts is belied by the fact that none of the out-of-state drivers ever received the benefits of union representation, and "at least one new 'member' was told that he would receive no union benefits in return for his payment except the opportunity to have his truck unloaded in the Cedar Rapids area" (Pet. App. A9). Moreover, most of the victims testified that they were self-employed owner-operators and not employees of a trucking company. Not only would union membership be of no conceivable use to such persons, but the National Labor Relations Act establishes that requiring self-employed persons to join any labor organization is per se an illegitimate labor objective. See 29 U.S.C. 158(b)(4)(A). And, even with respect to the non-union employees of trucking companies, it was contrary to both the National Labor Relations Act (29 U.S.C. 157) and the Iowa "right-to-work" law (Iowa Code Ann. § 731.1 *et seq.* (West 1979)) to compel union membership. Finally, petitioners' course of conduct constituted a violation both of the Taft-Hartley Act's prohibition against the acceptance of payments from an employer (29

U.S.C. 186(b)(1)) and its prohibition against exacting an unloading fee (29 U.S.C. 186(b)(2)).[7]

Despite the substantial evidence that petitioners obtained money to which neither petitioners nor their union had a lawful claim, petitioners nonetheless contend (Pet. 10) that *Enmons*' concern for "legitimate" labor demands encompasses all labor activities that are "traditional" and not just those that are in fact "lawful." But the unions in *Local 807* and *Green* were pursuing the "traditional" goal of attempting to obtain as much work as possible for their members. Nevertheless, as *Enmons* itself makes clear (410 U.S. at 408), those unions had no lawful claim to the "wages" paid in those cases.

Rather than *Enmons*, the case at bar is like *Local 807* and *Green*. The only difference is that the drivers here paid fees that petitioners called "initiation fees and dues" and the money went to the union treasury rather than to individual union members. But these are distinctions without a difference. See *Green*, 350 U.S. at 420. As the court below noted (Pet. App. A10), it was petitioners' objective

---

[7]Nor can petitioners convincingly contend that their demand for membership was lawful under the jurisdictional provisions of Local 238's contract with D & A and therefore required to maintain the integrity of the job site. The transient drivers were not employees of D & A subject to the agreement, nor did they perform any construction work on the site; accordingly, as a matter of law, the terms covering work jurisdiction in the D & A contract with Local 238 could not apply to the independent truckers making deliveries to Cedar Rapids. See *Joint Council of Teamsters* v. *NLRB*, 671 F.2d 305 (9th Cir. 1981); *Drivers Local No. 695* v. *NLRB*, 361 F.2d 547 (D.C. Cir. 1966). Moreover, as the court below stated (Pet. App. A10), petitioners' claimed reliance on the contract "is belied by the fact that non-union drivers were not allowed by the defendant Boeding to trade their loads with a union driver, and by the fact that the new 'members' were not allowed to drive trucks of other non-union drivers onto the site."

> to force non-union drivers to pay an unloading fee, and to force *all* non-union drivers, even self-employed drivers, to join, not just any Teamsters Union local, but Local 238 in Cedar Rapids, Iowa, regardless of whether the drivers' home or usual route of travel included Cedar Rapids.

Since there was no indication that the victim drivers were likely to return to the Cedar Rapids area or that they had any need for representation by Local 238 (which they did not receive in any event), petitioners' demands for "membership fees" were as unwanted and fictitious as the "wage" demands in *Local 807*. Thus, regardless of whether the instant practices may properly be characterized as "traditional," they were not "legitimate" within the meaning of *Enmons*.[8]

---

[8]The legislative history upon which petitioners rely (Pet. 8-12) is the same material the Court looked to in *Enmons* for its conclusion that the Hobbs Act does not apply to *legitimate* labor activity. As we have shown, Congress's concern for legitimate union activities has no application to the present case, in which membership fees were extorted from independent transient truckers, who neither wanted to join nor could legally be compelled to join Local 238. There is thus no merit to the Teamsters' argument (Br. 6-8) that the decision below will have a chilling effect on labor's "legitimate" organizational activities.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

ROBERT J. ERICKSON
Attorney

DECEMBER 1983

DOJ-1983-12